

10/668,528
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REMARKS

The following Remarks are fully responsive to the Office Action set forth above. Claims 28-36 are pending in the current application. In the above-identified Office Action, the Examiner rejected claims 28-36. By this Response, the Applicant hereby submits terminal disclaimers to obviate rejections on the ground of nonstatutory obviousness-type double patenting. The Applicant traverses the Examiner's rejection of claims 28-36 under 35 U.S.C. § 102(e).

Double Patenting

The Examiner rejected claims 28-36 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over certain claims of U.S. Patent Nos. 6,544,168, 6,375,608, 6,165,122, 6,077,218, 5,702,343, 6,126,590, and 6,165,121. Additionally, the Examiner has provisionally rejected claims 28-36 on the ground of non-statutory obviousness-type double patenting as being unpatentable over certain claims of co-pending U.S. Patent Application Nos. 10/668,460, 10/668,918, and 10/810,099. The Applicant traverses the double-patenting rejections by submitting herewith terminal disclaimers relating to each of the above-identified U.S. patents and applications. Withdrawal of the rejections on the ground of non-statutory obviousness-type double patenting is respectfully requested.

Claim Rejections – 35 USC § 102(e)

Claims 28-36 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,508,756 ("Kung"). The Applicant respectfully traverses.

The Kung patent discloses, in relevant part, a "girdle" applied to the epicardium. *See, e.g.,* C.19:52-54 ("This design will accommodate spontaneous heart size reduction even though some parts of the mesh may adhere to the epicardium."); C.20:4-5 ("The tissue

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engineered lining faces the patient's myocardium.''). There is no disclosure of placing the girdle of the Kung patent over the pericardium.

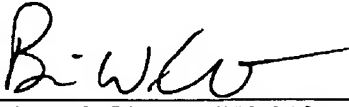
In contrast, claim 28 explicitly recites, in part, an apparatus comprising a jacket sized to be applied "over a pericardium of the heart." As explained above, the Kung patent does not teach or disclose applying its girdle over the pericardium. Moreover, the claimed apparatus has numerous advantages over the prior art. For example, the jacket as claimed accommodates implantation through a minimally invasive procedure (i.e., using a cannula that can be inserted through a small incision in the thorax). This is neither disclosed nor suggested by the Kung patent. Thus, for at least this reason, this reference cannot anticipate claim 28.

Accordingly, the Applicant asserts that claim 28 is patentable over the teachings of the Kung patent, and is in condition for allowance. Additionally, claims 29-36, which depend directly from claim 28, are patentable over the Kung patent and in condition for allowance for at least the same reasons.

A Notice of Allowance is respectfully requested.

Respectfully Submitted,

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